

### **REMARKS/ARGUMENTS**

Reconsideration of this Application and entry of this Amendment is respectfully requested. Upon entry of the foregoing amendment claims 1-24 are pending in the application, with claim 1 being the sole independent claim. Claims 3, 6-8, 11, and 12 are withdrawn from consideration as being drawn to a nonelected Species pending allowance of generic claim 1. Claims 25-39 have been canceled without disclaimer of or prejudice to the subject matter thereof.

#### **35 U.S.C. §102(b) Rejections**

Claims 1, 2, 4, 5, 9, 10, 13, 15, 16, 18-20, 22 and 23 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,304,121 to Sahatjian. The Examiner states that Sahatjian discloses “a delivery catheter, a stent framework and a porous material with a water insoluble salt of a therapeutic material (see figs. 4-6 and col. 9 lines 21-34).” Office Action p. 2.

Applicants aver that claims 1, 2, 4, 5, 9, 10, 13, 15, 16, 18-20, 22 and 23 are not anticipated by Sahatjian because that reference fails to disclose all elements of the claimed invention. Independent claim 1 recites that the porous material includes “a plurality of particles of a water-insoluble salt” of a therapeutic material dispersed throughout its pores. With reference to Applicants’ specification, “water insoluble salt” means that the salt within the pores “has a relatively poor solubility in water such that it will not readily disperse from the pores of the device.” Paragraph [0029]. Further, in each of Applicants’ Examples 1 and 2 it is noted that a solid precipitate, *i.e.*, a plurality of particles, of the insoluble salt is within the porous material of the inventive stent. Paragraphs [0038]-[0039]. On the other hand, Sahatjian discloses a heparin salt ***solution*** that is captured within a hydrogel polymeric coating to be freely released upon compression of the polymeric coating with expansion of the stent. *See* Sahatjian col. 8, lines 17-30 (Example 1); *see also* col. 9, lines 39-41, 54-55 (drug in aqueous solution) and col. 10, lines 17-20 (drug solutions). Sahatjian does not teach or suggest a porous material that includes “a plurality of particles of a water-insoluble salt” of a therapeutic material within its pores as claimed in independent claim 1. Accordingly, independent claim 1 is not anticipated by and is patentable over Sahatjian.

Claims 2, 4, 5, 9, 10, 13, 15, 16, 18-20, 22 and 23 depend from and add further features to independent claim 1 and are patentable for that reason alone. While it is not necessary to address

the Examiner's rejection of the dependent claims at this time, Applicants reserve the right to support their patentability, when necessary.

35 U.S.C. §103(a) Rejections

Claims 14, 17 and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sahatjian in view of U.S. Patent No. 5,716,981 to Hunter et al. and claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Sahatjian in view of U.S. Patent No. 5,304,121 to Tang et al.

As discussed above, the stent disclosed in the Sahatjian patent does not teach or suggest a porous material that includes "a plurality of particles of a water-insoluble salt" of a therapeutic material within its pores as recited in independent claim 1. Further neither Hunter et al. nor Tang et al. makes up for the deficiency in the primary reference, as neither of the references teaches or suggests a porous material loaded with particles of a water-insoluble salt of a therapeutic material as recited in claim 1. As such, claims 14, 17, 21 and 24 that depend from and add further features to independent claim 1 are patentable over the afore-mentioned combination of references for that reason alone. While it is not necessary to address the Examiner's rejection of the dependent claims at this time, Applicants reserve the right to support their patentability, when necessary.

**CONCLUSION**

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-5021.

Respectfully submitted,

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